

STATE OF LOUISIANA

DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

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**Settlement Tracking No.
SA-MM-04-0009**

**LOUISIANA DEPARTMENT OF
TRANSPORTATION AND DEVELOPMENT
AI # 99854**

**Enforcement Tracking No.
MM-C-02-0094**

**PROCEEDINGS UNDER THE LOUISIANA
ENVIRONMENTAL QUALITY ACT
LA. R.S. 30:2001, ET SEQ.**

Docket No. 2004-5383-EQ

SETTLEMENT

The following Settlement is hereby agreed to between Louisiana Department of Transportation and Development ("Respondent") and the Department of Environmental Quality ("DEQ" or "the Department"), under authority granted by the Louisiana Environmental Quality Act, La. R.S. 30:2001, et seq. ("the Act").

I

Respondent is a governmental entity that owns and operates the bridges in New Orleans, Orleans Parish, Louisiana known as the Crescent City Connection ("the Facility").

II

On April 4, 2003, the Department issued a Compliance Order, Enforcement No. MM-C-02-0094, to Respondent, which was based upon the following:

The Respondent contracted with Certified Coatings of California as the prime contractor for sandblasting and repainting the Crescent City Connection Bridge #1, and Kazanas Industrial

Maintenance as a subcontractor to Certified Coatings of California (hereinafter referred to as "Contractor").).

Neither Respondent nor Contractor had (or presently has) a Louisiana Pollutant Discharge Elimination System (LPDES) permit or other authority to discharge wastes and/or other substances to the waters of the State from this location.

On or about May 31, 2002, and June 3, 2002, inspections of the facility were conducted by the Department and the following violations were noted:

- A. The Respondent did cause or allow the unauthorized discharge of approximately 200 gallons of diesel fuel and an unknown quality of sandblasting media into the Mississippi River waters of the state. Specifically, diesel spilled on the bridge deck flowed into deck drains, thence into a sump at the base of the bridge pier located on the east bank of the Mississippi River. The sump then drains into a storm drain sump that receives storm water runoff from the New Orleans Convention Center complex and is then pumped into the Mississippi River. Approximately 44,000 gallons of diesel-contaminated water were removed from the storm drainage system by U.S. Environmental, a United States Coast Guard Contractor, by June 3, 2002. Also during the inspection, it was observed that representatives of the Respondent were sweeping sandblasting media from the base of the west bank bridge pier into the Mississippi River. Representatives of the Respondent were also observed loading sandblasting media into buckets, then lowering the buckets into the Mississippi River. These unauthorized discharges of diesel fuel and sandblasting media into the waters of the state are in violation of

La. R.S. 30:2075, La. R.S. 30:2076(A)(1)(a), La. R.S. 30:2076(A)(3), LAC 33:IX.501.A, LAC 33:IX.501.C, LAC 33:IX.2311.A.1, and LAC 33:VII.315.P.

- B. The Respondent failed to notify the Department verbally or in writing of the aforementioned unauthorized discharge of diesel fuel. The failure to notify the Department of such spill events is in violation of La. R.S. 30:2025(J)(2), La. R.S. 30:2076(A)(3), La. R.S. 30:2076(D), LAC 33:IX.501.A., LAC 33:I.3917.A, and LAC 33:I.3925.A.
- C. The Respondent failed to implement an adequate Spill Prevention and Control (SPC) plan by failing to provide pollution containment devices that under normal operating conditions prevent unauthorized discharges. The failure to implement an adequate SPC plan is in violation of La. R.S. 30:2076(A)(3), LAC 33:IX.501.A, and LAC 33:IX.905.A.
- D. The Respondent failed to report to the Department the aforementioned discharge/deposit of solid waste into the waters of the state, in violation of LAC 33:VII.315.K.
- E. The Respondent failed to determine if generated sandblasting media waste and approximately 200 gallons of diesel fuel waste were a hazard, in violation of LAC 33:V.1103. Hazardous waste determinations were performed by U.S. Environmental, a United States Coast Guard contractor. The waste was determined to be non-hazardous solid waste.

III

In response to the Compliance Order, Respondent made a timely request for a hearing.

IV

Respondent denies it committed any violations or that it is liable for any fines, forfeitures and/or penalties. Respondent particularly denies that any sandblasting materials or diesel fuel was discharged into the Mississippi River or any waters of the State.

V

Nonetheless, Respondent, without making any admission of liability under state or federal statute or regulation, agrees to pay, and the Department agrees to accept, a payment in the amount of ONE THOUSAND AND NO/100 DOLLARS (\$1,000.00) of which Nine Hundred Sixty-Three and 80/100 Dollars (\$963.80) represents DEQ's enforcement costs, in settlement of the claims set forth in this agreement. The total amount of money expended by Respondent on cash payments to DEQ as described above, shall be considered a civil penalty for tax purposes, as required by La. R.S. 30:2050.7(E)(1).

VI

Respondent further agrees that the Department may consider the inspection report(s), the Compliance Order and this Settlement for the purpose of determining compliance history in connection with any future enforcement or permitting action by the Department against Respondent, and in any such action Respondent shall be estopped from objecting to the documents referred to hereinabove from being considered by the Department for the sole purpose of determining Respondent's compliance history.

VII

This agreement shall be considered a final order of the secretary for all purposes, including, but not limited to, enforcement under La. R.S. 30:2025(G)(2), and Respondent hereby waives any right to administrative or judicial review of the terms of this agreement, except such review as may be required for interpretation of this agreement in any action by the Department to enforce this agreement.

VIII

This settlement is being made in the interest of settling the state's claims and avoiding for both parties the expense and effort involved in litigation or an adjudicatory hearing. In agreeing to the compromise and settlement, the Department considered the factors for issuing civil penalties set forth in LSA- R. S. 30:2025(E) of the Act.

IX

The Respondent has caused a public notice advertisement to be placed in the official journal of the parish governing authority in Orleans Parish. The advertisement, in form, wording, and size approved by the Department, announced the availability of this settlement for public view and comment and the opportunity for a public hearing. Respondent has submitted a proof-of-publication affidavit to the Department and, as of the date this Settlement is executed on behalf of the Department, more than forty-five (45) days have elapsed since publication of the notice.

X

Payment is to be made within thirty (30) days from notice of the Secretary's signature. If payment is not received within that time, this Agreement is voidable at the option of the Department. Payments are to be made by check, payable to the Department of Environmental

Quality, and mailed or delivered to the attention of Darryl Serio, Office of Management and Finance, Financial Services Division, Department of Environmental Quality, Post Office Box 4303, Baton Rouge, Louisiana, 70821-4303. Each payment shall be accompanied by a completed Settlement Payment Form (Exhibit A).

XI

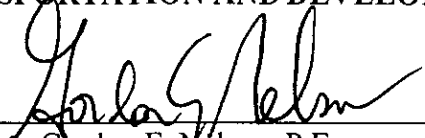
In consideration of the above, any claims for penalties are hereby compromised and settled in accordance with the terms of this Settlement.

XII

Each undersigned representative of the parties certifies that he or she is fully authorized to execute this Settlement Agreement on behalf of his/her respective party, and to legally bind such party to its terms and conditions.

LOUISIANA DEPARTMENT OF
TRANSPORTATION AND DEVELOPMENT

BY: _____


Gordon E. Nelson, P.E.
Assistant Secretary, Operations

THUS DONE AND SIGNED in duplicate original before me this 14th day of
October, 2005, at New Orleans, La.

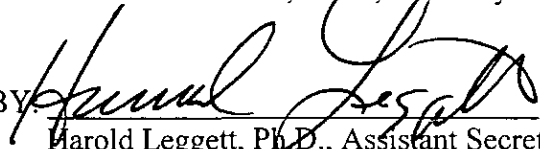

NOTARY PUBLIC (ID # 10576)

KENNETH E. PICKERING
(Print)

LOUISIANA DEPARTMENT OF
ENVIRONMENTAL QUALITY

Mike D. McDaniel, Ph.D., Secretary

BY: _____


Harold Leggett, Ph.D., Assistant Secretary
Office of Environmental Compliance

THUS DONE AND SIGNED in duplicate original before me this 2nd day of

February, 2006 at Baton Rouge, Louisiana.


NOTARY PUBLIC (ID # 26456)

Ted L. Bryant, II
(Print)

Approved: _____


Harold Leggett, Ph.D., Assistant Secretary